



COMMITTEE FOR
GREEN FOOTHILLS



Ohlone Audubon
Society



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The Honorable Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. Mail Code: 1101-A
Washington, DC 20460
Email Address: mccarthy.gina@epa.gov
Sent via email, hard copy to follow

February 24, 2015

Dear Administrator McCarthy:

We are in receipt of several documents indicating the U.S. Army Corps of Engineers (Corps) has contemplated disclaiming Section 404 Clean Water Act jurisdiction over any of the Redwood City salt ponds (also known as the Saltworks) currently owned by Cargill Inc. We are writing the U.S. Environmental Protection Agency to urge the EPA to assert its legal and regulatory authority to intercede in this matter. In 2010, the Citizens Committee to Complete the Refuge submitted a report, "Regulatory Analysis of Clean Water Act Section 404 and Rivers and Harbors Act Section 10 Jurisdiction at Redwood City Salt Ponds, San Mateo County, California." [copy attached]

That report provided detailed evidence as to why the entirety of the ponds within the Redwood City salt pond complex should be subject to Section 404 Clean Water Act jurisdiction. The report also provided ample examples of historic and post-SWANCC instances of the Corps' assertion of regulatory authority over salt ponds that were identical to, or even located within, the same Redwood City pond complex.

This pond complex was clearly constructed as an impoundment of waters of San Francisco Bay, an undeniably navigable water. If not for the existence of the levees, all of the ponds within the complex would be subject to the ebb and flow of the tides.

The assertion by the Corps that Section 404 jurisdiction over any of the ponds within this complex might be extinguished by the nature of the "liquid" (concentrated bay waters) within the ponds is untenable and would set a horrible precedent that would have ramifications and negative consequences beyond the San Francisco Bay Area.

Nowhere in the definition of waters of the United States is there a criterion that would eliminate a waterbody from jurisdictional consideration solely based upon the salt concentration of the water contained. What chilling effect would this have on the assertion of jurisdiction over the Great Salt Lake, or playa lakes, or naturally occurring salt pannes (which the solar evaporators and concentrators mimic)?

It is also inarguable that the pond complex operators have the ability to manipulate the movement of liquid through the salt pond complex, thus, if Clean Water Act jurisdiction is based upon the nature of the "liquid" that is present within any given pond, it follows jurisdiction could be easily extinguished at the whim of the salt pond operator.

The Mowry 1, 2, and 3 ponds in Fremont provide a prime example of the consequences that could follow in the wake of the Corps' flawed rationale for disclaiming Clean Water Act jurisdiction. The Mowry 1, 2, 3 ponds have long been identified as having tremendous potential for relatively quick conversion to tidal marsh. They possess elevations that are suitable for tidal marsh habitat, and traditionally contained lower salinity waters. However, under consolidation of the salt-making operation, Cargill converted the Mowry 1, 2, 3 ponds from low salinity intake ponds to higher salinity concentration ponds. Another example is the conversion of Mowry ponds 12 and 13 from concentrators to bittern ponds.

It is a sad day indeed, when all out lobbying efforts by big business on the upper echelons of government can adversely impact agency decisions. There are records of the Corps regulating the construction of dikes and dams across tidal slough banks through the Rivers and Harbors Act dating back to the early 1900's. The Corps has asserted Clean Water Act and Rivers and Harbors Act regulatory authority over salt ponds, and explicitly over ponds with the exact conditions of those in Redwood City, since the 1980's. To take a stance that the Redwood City ponds should not be regulated, would be contrary to all other decisions made along the edges of the bay, and would set a horrible precedent not only within the bay area, but nationwide.

The undersigned organizations urge the EPA to assert its legal and regulatory authority over the Clean Water Act jurisdictional delineation process for the Redwood City salt ponds.

Thank you for your action on this matter.

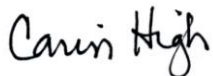
Regards,



Florence LaRiviere, Chairperson
Citizens Committee to Complete the Refuge



Ian Wren, Staff Scientist
San Francisco Baykeeper



Carin High, Vice-Chair
Citizens Committee to Complete the Refuge



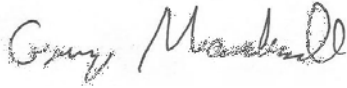
Alice Kaufman, Legislative Advocate
Committee for Green Foothills



Shani Kleinhaus, Environmental Advocate
Santa Clara Valley Audubon Society



Brent Plater,
Wild Equity



Ginny Marshall, President
Sequoia Audubon Society



Evelyn Cormier, President
Ohlone Audubon Society



Lisa Belenky, Senior Attorney
Center for Biological Diversity



Mike Ferreira, Chapter Conservation Chair
Loma Prieta Chapter Sierra Club



Cindy Margulis, Executive Director
Golden Gate Audubon Society



Arthur Feinstein,
San Francisco Bay Chapter Sierra Club

cc: Jared Blumenfeld, Administrator EPA Region 9